

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

MICHAEL GOMILLION,

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Petitioner,

*

vs.

*

WARDEN TARMARSHE SMITH and
ATTORNEY GENERAL CHRISTOPHER
CARR,

*

CASE NO. 4:19-CV-223 (CDL)

*

Respondents.

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O R D E R

This matter is before the Court pursuant to a Report and Recommendation by the United States Magistrate Judge entered on July 11, 2020. There was no objection to this Recommendation as permitted by 28 U.S.C. § 636(b)(1). Therefore, the Court reviews the Recommendation for clear error. Finding no clear error, the Court adopts the Recommendation of the Magistrate Judge and makes it the order of this Court, including the denial of a certificate of appealability.

The Court recognizes that Petitioner did file a motion for an evidentiary hearing. That motion does not address the Magistrate Judge's conclusions that Respondent Carr should be dismissed as an improper party or that Petitioner's habeas petition should be denied as untimely. The motion does contend that the Court should hold an evidentiary hearing so that Petitioner may present evidence

on his actual innocence claim, although Petitioner did not describe the evidence he would present. But, as the Magistrate Judge found, Petitioner's habeas petition was untimely. Moreover, Petitioner did not point to any new facts supporting his claim for actual innocence, and he did not argue or present evidence that he was unaware of facts supporting his claim for actual innocence before the limitations period expired. For these reasons, Petitioner did not establish that an evidentiary hearing is warranted, and his motion (ECF No. 14) is denied.

IT IS SO ORDERED, this 8th day of October, 2020.

S/Clay D. Land

CLAY D. LAND

U.S. DISTRICT COURT JUDGE

MIDDLE DISTRICT OF GEORGIA